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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,845	01/22/2002	Muguo Chen	eVionyx-0013USAAON00	7893
7590 03/23/2004			EXAMINER	
RALPH J. CRISPINO REVEO, INC. 85 EXECUTIVE BLVD. ELMSFORD, NY 10523			MAPLES, JOHN S	
			ART UNIT	PAPER NUMBER
			1745	

DATE MAILED: 03/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/055,845	Applicant(s) CHEN, MUGUO	
	Examiner John S. Maples	Art Unit 1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 ~~is~~ are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 ~~is~~ are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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1. Figures 1 and 2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to because in Figure 3, the wrong element has been labeled #316. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-5 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a rechargeable metal air cell, does not reasonably provide enablement for other types of rechargeable cells that are not metal air cells. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

Pages 1 and 2 of the present specification are directed to metal air cells. The Summary of the Invention describes only a metal air cell. The drawings and the corresponding text are directed to metal air cells only. The Detailed Description including pages 5 and 6 of the present specification is directed solely to a metal air cell. The first sentence in the Abstract is to a rechargeable metal air cell.

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In view of the above, the claims should thus be amended to recite a metal air cell because the specification along with the drawings are directed to only this type of rechargeable cell. It is unclear, therefore, if other rechargeable cells would function using the particular elements applicant has recited in the present specification.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by either O'Callaghan-US 5,093,213 or Lapp-US 5,147,736.

With regard to O'Callaghan, see column 4, line 35 through column 6, line 47 and all of the drawing figures. In these portions of O'Callaghan, electrolyte flows through inlet tubes 27 via manifolds 15 into which inlet tubes 16 feed into the manifold. Outlet conduit 32 and outlet 33 allow the electrolyte to flow back into the electrolyte reservoir. Thus the claimed tube for allowing electrolyte flow between the electrodes in the metal air cell is taught by O'Callaghan.

In Lapp, reference is made to column 3, line 50 through column 5, line 14 along with all of the drawing figures. As set forth in column 4, line 61-column 5, line 6 of Lapp, the tubes 43, 44 and 45 and inlets 42 provide fluid access between the metal air cells.

7. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Tamminen-US 4,684,585.

Reference is made to the Abstract in Tamminen along with column 3, line 37-column 5, line 27. In these portions of Tamminen, a rechargeable nickel-zinc battery is taught where a tube

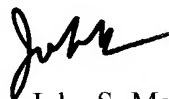
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36 is shown in Figure 1 that allows liquid solvent to flow between the two electrodes. The fluid can flow out of tube 36 to pump 27 upward through tube 29 to housing 33 where the electrolyte travels through tube 34 and into the cells.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John S. Maples whose telephone number is 571-272-1287. The examiner can normally be reached on Monday-Thursday from 6:15-3:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John S. Maples
Primary Examiner
Art Unit 1745

JSM/3-16-2004